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# CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

## Eighth periodic reports of States parties due in 1990

## Addendum

## BELGIUM*

[28 October 1991]

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*/ This report combines in a single document the fifth, sixth, seventh and eighth periodic reports of Belgium, due for submission respectively on 6 September 1984, 1986, 1988 and 1990. For the third and fourth periodic reports of Belgium, submitted in a single document, and the summary records of the meetings at which the Committee considered the reports, see: CERD/C/88/Add.5 and CERD/C/SR.663-665.

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## INTRODUCTION

1. This report combines in a single document the fifth, sixth, seventh and eighth periodic reports by Belgium, which regrets the delay in submitting the reports to the Committee on the Elimination of Racial Discrimination. This is due to various concomitant factors linked, inter alia, to the rapid constitutional and legislative developments in Belgium, the reform of State institutions and the shortage of national public service officials.

2. Belgium none the less takes this opportunity to reaffirm the importance it attaches to the human rights monitoring bodies and mechanisms established within the United Nations treaty framework. It should be pointed out that during the course of 1991, Belgium also submitted a report on the implementation of the International Covenant on Civil and Political Rights, which was transmitted to the Commission on Human Rights.

3. This periodic report, compiled in the light of the new guidelines contained in document HRI/1991/1 of 27 February 1991, consists of three parts:

(a) A general part presenting information on Belgium's socio-economic and political profile, as well as a description of the general judicial framework for the protection of human rights; 1/

(b) A part containing the actual report, compiled with reference to the provisions of the articles of the International Convention on the Elimination of All Forms of Racial Discrimination; 2/

(c) A part consisting of annexes, namely a set of documents intended to supplement the information in the report. 3/

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1/ The information submitted by Belgium in accordance with the consolidated guidelines concerning the initial part of reports of States parties (HRI/1991/1) is contained in the core document (CERD/CORE/51).

2/ This part constitutes the present document.

3/ These annexes were submitted in French and may be consulted at the United Nations Centre for Human Rights.

# PART I

## Articles 2, 3 and 5

## I. LEGISLATIVE DEVELOPMENT

### A. Amendments to the Constitution

4. The fifth institutional reform introduced in the summer of 1988 provided the opportunity to embark upon a substantial broadening of the powers of the new political entities, for the autonomous community and regional organizations had, by then, been operational for some eight years. The search for community conciliation, the readiness to adopt the system to fund these new entities and the establishment of institutions from the Brussels area, in addition to broader jurisdiction for the Court of Arbitration and enhanced cooperation between the Government, the Communities and the Regions, were the mainsprings of the 1988 State reform project.

5. As an informed Belgian constitutionalist has stated, with the creation of the Communities and Regions under the revisions of the Constitution in 1970, 1980 and 1988, Belgium is no longer a unified State. Within the framework of the jurisdictions of ratione materiae and ratione loci conferred upon them, these new entities have the power to adopt legally binding decrees and have relevant deliberative (councils) and executive bodies, in addition to financial means of their own.

6. The division of sovereignty goes further than is usual in the case of a regional State where the central authority, due to its legislative and political control has the final say. On the other hand, some of the features essential to a federal State are still missing, since the Communities and Regions have no judicial bodies, take no part as such in the revision of the Constitution or national legislation, and have no residual jurisdiction or constitutional court.

#### 1. Revision of the Constitution

7. The fifth revision of the Constitution (July 1988) produced a number of changes on several points:

(a) Regarding general elections, elimination of the obligation, for voting purposes, of at least six months' residence in the same commune (art. 97), and the obligation for the membership of electoral colleges to be confined to provincial territory (art. 48);

(b) The creation, by a community law, of a new system of financing for the Communities (art. 59 bis, para. 6) and the Regions (art. 115, para. 3).

(c) Full control by the Communities over education, except for determining the beginning and end of compulsory school attendance; the minimum conditions for the award of diplomas and the grants system; the creation of new guarantees to protect freedom of education in the Communities, which,

being authorities that organize State education, can, by way of a decree adopted by a two thirds majority, transfer jurisdiction to one or more autonomous bodies (art. 17);

(d) The broadening of the jurisdiction of the Court of Arbitration;

(e) Wider powers for the Flemish and French Communities in regard to international cooperation (art. 59 bis, para. 2);

(f) Authority in Greater Brussels is exercised by the bodies of the Brussels-Capital Region, where each linguistic group has jurisdiction for its community in matters pertaining to the bilingual Brussels-Capital area (art. 108 ter);

(g) The regulations to introduce, by a Community law, changes in the provisions on the use of languages in administration, and in education and social relations between employers and workers, in communes under another linguistic region where the law so prescribes or where it permits the use of a language other than that of the region concerned.

### 2. Special Act of 8 August 1988

8. This Special Act includes provisions on the composition, jurisdiction and administrative services of the councils and the Executives and on cooperation between the State, the three Communities and the three Regions (see in this regard the core document, HR1/CD/51).

### 3. Special Act of 16 January 1989

9. This Special Act regulates the system for financing the Flemish Community, the French Community, the Flemish Region, the Walloon Region and the Brussels-Capital Region. The financing of the German-language Community is to be regulated by an ordinary law. Such financing depends on a system of grants and rebates, a national solidarity contribution for regions where the average per capita tax proceeds from natural persons are lower than those of the Kingdom, a suitable fiscal policy which will not affect monetary and economic unity, the collection of various types of regional taxes and the ability to take out loans.

## B. International legislation

10. There are numerous international instruments aimed at promoting equality between men and combating racial discrimination. They include the Universal Declaration of Human Rights (10 December 1948), the Convention on the Prevention and Punishment of the Crime of Genocide (9 December 1948), the United Nations Declaration on the Elimination of All Forms of Racial Discrimination (20 November 1963), the International Convention on the Elimination of All Forms of Racial Discrimination (29 December 1965), the International Covenant on Economic, Social and Cultural Rights (19 December 1966), the International Covenant on Civil and Political Rights (19 December 1966) and the International Convention on the Suppression and

Punishment of the Crime of Apartheid (30 November 1973). With the exception of the latter Convention, Belgium has approved or ratified these international legal instruments.

## C. Internal legislation

### 1. Act of 30 July 1981 to supress certain acts based on racism or xenophobia

11. This Act, which entered into force on 18 August 1981, established a genuine system of protection for aliens, providing remedies before the courts. It defines neither racism nor xenophobia, and from the prescriptive provisions of the law and the wishes of the legislature, it lies with judicial practice to sift out gradually the meaning of such an act. Prior to adoption of the Act of 1981, three provisions of Belgium's criminal legislation (Criminal Code, arts. 151, 444 and 448) could be invoked by any person seeking to obtain compensation for damages arising from a civil servant's injurious behaviour, attack on his honour, or failure to respect his rights or freedoms.

12. The new Act affords broader protection and establishes that four types of behaviour based on racism and xenophobia are punishable offences: (a) incitement to discrimination against an individual or a group (art. 1); (b) refusal to provide goods or services in a place open to the public (art. 2); (c) membership of a group or association which practises discrimination (art. 3), and arbitrary refusal by a civil servant or a public official to allow someone to exercise his rights or freedoms (art. 4). Moreover, under the Act associations with legal personality or public interest undertakings have the right to take legal action in accordance with the conditions specified therein (art. 5).

#### Article 1

13. Article 1 stipulates imprisonment for eight days to six months and/or a fine of 25 francs to 500 francs for incitement to discrimination, segregation, hatred or violence on the ground of race, colour, descent or national or ethnic origin against individuals, groups or communities or any of their members. The article also punishes any person publicizing his intent to practise racial discrimination. The notion of discrimination must be interpreted in the light of the definition contained in article 1 of the International Convention.

14. According to learned opinion, discrimination, which is prohibited, is not to be confused with differentiation, which is tolerated. With reference to the practice of the European Court of Human Rights, it must be viewed in the sense of unwarranted or arbitrary distinctions, in the light of de facto and de jure considerations. The Act is aimed at conduct which is both discriminatory and derogatory with regard to individuals because of race, nation or ethnic group to which they belong.

15. The concept of segregation is mentioned in the Act in reference to article 3 of the International Convention and to cover offences in respect of groups or communities. The notions of hatred and violence are left to the discretion of the judge in the light of the terms of the Act and its

objectives. The inclusion of the notion of descent is based on article 1 of the Convention and, in keeping with the interpretation of the Minister of Justice at the time, it constitutes "the sole guarantee against anti-Semitism for Jews whose national origin is unknown or who, in the case of non-practising Jews, would have difficulty in proving the culture or ethnic groups to which they belong".

16. The limitation to the criteria contained in the International Convention is the result of a deliberate choice on the part of the Belgian Government, which believed it undesirable, in legal terms, to lay down different criteria according to whether the Act or the Convention was to be taken into consideration. On these grounds, criteria such as language or religion have been set aside in order to avoid any form of controversy over matters which are very delicate for the Belgian population in particular.

17. In the courts, article 1 of the Act has given rise to decisions in cases brought before the Brussels and Charleroi courts of first instance and the Brussels and Hasselt correctional courts.

18. The various offences under article 1 have to be committed in public, as stipulated in article 444 of the Criminal Code. Such offences must have been committed:

At public meetings or in public places; or

In the presence of several individuals in a place that is not public but that is open to a number of persons who have the right to meet there or to frequent it; or

In any place whatsoever, in the presence of the aggrieved party and before witnesses; or

In writing, whether or not printed, images or emblems that are posted up, distributed or sold, placed on sale or displayed to the public; or

In writing that is not made public but is addressed or communicated to a number of persons.

## Article 2

19. Article 2, pursuant to article 5 (f) of the International Convention on the Elimination of All Forms of Racial Discrimination, guarantees everyone's right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes and theatres, from which an individual may not be excluded on the ground of racial discrimination. In this connection, the article makes anyone who provides or offers goods or services in a place that is open to the public and commits an act of discrimination against a person on the ground of his race, colour, descent or national or ethnic origin liable to imprisonment from eight days to three months and/or a fine of 26 francs to 200 francs. The same penalties apply in the case of acts of discrimination against a group or a community.

20. It should be pointed out that articles 1 and 2 do not cover the same situation. Whereas article 1 concerns incitement to discrimination, hatred or violence on the ground of race, colour, descent, or national or ethnic origin, article 2 relates to acts of discrimination as such. The two articles are none the less complementary. For instance, refusal to rent an apartment is not covered by article 2, since this article presupposes that, to be punishable by law, the provision of premises or services occurs in a place open to the public, something which does not apply to a private apartment. However, refusal to rent to foreigners when expressed by affixing notices specifying such refusal brings article 1 into play. Article 2 of the Act has led to a case law based on decisions by the Hasselt and Namur correctional courts and the Liège Court of Appeal.

Article 3

21. With a view to counteracting the activities of organizations that practise or advocate racial discrimination or segregation, article 3 prohibits membership of such organizations on pain of imprisonment from eight days to six months and/or a fine of 26 francs to 500 francs. The fact of belonging to such groups is tantamount to endorsing their activities and helping to spread their ideas. This article is in accordance with article 4 (b) of the International Convention on the Elimination of All Forms of Racial Discrimination. To understand the article, more particularly why the legislature did not simply prohibit such organizations, it must be placed in the overall context of the Act, which is designed to combat racism, that is, the article must be considered in relation to articles 1 and 2, of which it is a continuation.

22. While article 1 imposes penalties for incitement to discrimination, segregation, hatred or violence on the ground of race, colour, descent or national or ethnic origin and article 2 imposes penalties for discriminatory acts by reference to those criteria, article 3 tries to discourage participation in associations that advocate and practise the acts punishable under articles 1 and 2. The aim of the legislature is in this way gradually to put an end to such associations, which would cease to exist for lack of members. In practice, article 3 makes it possible to fight against groups that advocate racism or xenophobia and precludes the need to introduce into our legislation measures that would enable the political authorities to disband such movements. The judicial authorities alone should have jurisdiction in the matter.

23. Article 3 imposes penalties not only on membership of a group or association that practises or advocates discrimination or racial segregation but also on any person who renders assistance to such a group or association. Application of the article is subject to two conditions: first, the group or association must advocate racial discrimination manifestly and repeatedly, and secondly, such activities must take place publicly, as specified in article 444 of the Criminal Code. There is no requirement that the member of the association should be active, but simply that he be aware of the objects of the organization.

Article 4

24. Article 4 is directed essentially at discriminatory acts committed by civil servants, public officials and servants or agents of the public authorities or of the police force. It imposes a penalty of imprisonment from 15 days to one year for any civil servant, public official or public servant or agent who, by reason of a person's race, colour, descent or national or ethnic origin, arbitrarily refuses to allow that person to exercise his rights or freedoms. It likewise makes such acts punishable by law when they are committed against a group or a community. These provisions have not so far produced case law.

Article 5

25. Under this article, the legislature has empowered certain public interest undertakings and certain associations whose objects, under their by-laws, are to protect human rights or combat racial discrimination, to appear in legal proceedings in any lawsuit to which the application of the Act gives rise. There are two conditions:

(a) Such public interest undertakings and such associations must have had legal personality for at least five years on the date on which the acts took place, which period is provided for in order to ensure that an association created a posteriori cannot go to court for the purpose of instituting proceedings;

(b) If the offence has been committed against persons as individuals, proceedings by the association will be admissible only if it proves that it has obtained the agreement of such persons. Such agreement must be obtained prior to the legal proceedings.

26. Public interest undertakings and associations which comply with the legal requirements are entitled to take part in legal proceedings in any lawsuit to which the application of the Act gives rise. Accordingly, they may appear as claimants for damages at all stages of criminal proceedings, summon persons directly before the correctional court and even bring a civil action. Some organizations can claim to comply with the legal requirements: the public interest undertaking "Belgian League for the Protection of Human Rights", and the non-profit-making association "Movement against Racism, Anti-Semitism and Xenophobia" (MRAX).

2. Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens, amended by the Acts of 28 June 1984, 14 July 1987 and 18 July 1991

(a) Temporary residence and permanent residence of aliens

27. Side by side with the general conditions governing the entry and temporary and permanent residence of aliens, the above-mentioned Act gives formal recognition to a right of temporary residence and a right of permanent residence for several categories of aliens, namely, those who, ipso jure, have a right of residence for more than three months, EEC nationals under EEC

regulations and directives, refugees and, subject to certain conditions, students. In particular, the Act applies a policy of family regrouping by granting certain members of an alien's family the right to accompany or to join the head of the family; this applies to the spouse and to dependent children under 18 years of age living with the person concerned.

28. In general, and in so far as the right of temporary residence is concerned, the Act provides that temporary residence is authorized for an indefinite period, except in special circumstances pertaining to the individual concerned or to the purpose of his stay. Efficient operation of these provisions is guaranteed by the alien's right of appeal; this may, depending on the case, take the form of an urgent request to rescind a security measure or of an appeal to the courts. Moreover, all administrative decisions can be appealed before the Council of State.

(b) Measures for removal

29. The Act provides for four kinds of removal measures, depending essentially on the administrative situation of the alien concerned:

(a) Refoulement applies to an alien who presents himself at the frontier; it forms part of the powers of frontier control authorities, subject to compliance with the conditions prescribed by law;

(b) An order to leave the country is issued against an alien who is not authorized to enter or to reside temporarily in Belgium for more than three months or to take up permanent residence. The order is issued by the Minister of Justice or his representative, in cases provided for by law;

(c) Deportation (renvoi) is decided upon by ministerial order issued by the Minister of Justice in respect of an alien who does not have the right of permanent residence in Belgium and who has committed an offence against public order or of national security, or has failed to comply with the conditions on which he was permitted to enter the country;

(d) Expulsion is pronounced by Royal Decree and specifically concerns an alien having permanent residence in Belgium who has committed a serious offence against public order or national security.

30. Only deportation and expulsion have long-term effects, in that, unless suspended or deferred, they entail a ban on entering the country for a period of 10 years. Neither refoulement nor an order to leave the country constitutes an obstacle to the alien's return to Belgium provided he fulfils the conditions he failed to meet previously.

(c) Aliens Advisory Commission

31. This Commission is required to provide the Minister with advisory opinions in cases provided for by the law as well as in all other cases where the Minister deems it necessary to request such an opinion.

(i) Powers of the Commission

32. The Commission must be consulted in all cases of possible expulsion of an alien. Consultation is also compulsory in the event of a ministerial deportation order if an international treaty provides that the alien must first be heard. When a request for review is submitted to the Minister of Justice, the Minister must seek the Commission's opinion, unless he did so before adopting the decision against which the appeal is being made. Lastly, the Commission's opinion must also be sought in connection with any request to rescind a security measure.

(ii) Procedure

33. An alien appearing before the Commission may be assisted or represented by a lawyer of his choice or, if he does not have the means to pay for defence counsel, by a lawyer appointed by the Advice and Defence Office. Proceedings are conducted orally. If the alien does not understand either of the national languages, the services of an interpreter are used. The Commission may hear witnesses. The alien and his lawyer have access to the papers in the case, with the exception of documents which the Chairman of the Commission declares confidential.

(d) Law pertaining specifically to refugees

(i) General principles

34. This area of the law has been amended by the Act of 18 July 1991. Under the provisions of this Act, refugees recognized as such are automatically granted the right of temporary or permanent residence in Belgium. An applicant for refugee status may declare himself to be such either at the frontier or inside the country if the legal time limits are observed. Grounds for refoulement or for refusal to grant a residence permit, as the case may be, are listed exhaustively in the Act and may be invoked by the Minister of Justice or his representative. If an applicant for refugee status has not been refused entry into Belgium, he can form the subject of a measure of removal only after an advisory opinion has been obtained from the Commissioner General for Refugees and Stateless Persons, an administrative authority independent of the Minister of Justice. Otherwise, he may, by a decision of the Minister of Justice or his representative, be conducted to the frontier of the country from which he has fled. An appeal against such a decision can be brought before the courts if the urgent request for review (the remedy against a ruling of inadmissibility) has been rejected contrary to the opinion of the Commissioner General for Refugees and Stateless Persons.

(ii) Procedures

(a) Procedure for the consideration of admissibility

35. The Act specifies that an alien applying for asylum may be refused entry into Belgian territory for the following reasons:

(a) If the alien is deemed to be a danger to public order or national security;

(b) If the request is patently motivated by considerations unrelated to asylum;

(c) If the alien has been deported or expelled from Belgium within a period of less than 10 years, unless that measure has been suspended or deferred;

(d) If, after leaving his country, the alien has resided for longer than three months in one or more third countries and left that country, or the last of those countries, without fear of being persecuted within the meaning of the Geneva Convention;

(e) If the alien cannot produce either a travel document or an airline ticket, and if he declares that he has destroyed them or does not possess them;

(f) If he is using forged papers without spontaneously declaring this to be the case or providing an acceptable reason for so doing, and hence an attempt is being made to mislead the local authorities can be said to exist.

36. A decision declaring a request for asylum is inadmissible, whether it is by the Minister of Justice or his representative, may give rise to an urgent request for review, which has to be addressed to the Commissioner General for Refugees and Stateless Persons and submitted within 24 hours of notification of denial of entry or within three days of notification of denial of the right to temporary or permanent residence. The Commissioner General or one of his deputies issues an opinion within two working days of receipt of the urgent request for review in the event of denial of entry at the frontier or within seven working days in the event of denial of the right to temporary or permanent residence. If the opinion of the Commissioner General is unfavourable, the Minister of Justice or his representative confirms the decision to refuse entry or the right to temporary or permanent residence. An unfavourable opinion by the Commissioner must expressly state whether the alien can be conducted to the frontier of the country from which he has fled and where he claims his life or freedom would be threatened. In the event of a favourable opinion by the Commissioner General, the Minister of Justice may, within five working days, override that opinion and take a new decision to refuse entry or temporary or permanent residence. Such a decision by the Minister must be substantiated in regard to the opinion of the Commissioner General, who must be notified within a time limit of five days. In such a case, the decision taken by the Minister of Justice to have the alien conducted to the frontier of the country from which he has fled and where he believes he would be in jeopardy may give rise to an appeal for a ruling in chambers by the president of the court of first instance.

(b) Procedure for the consideration of substance

37. As to substance, authority to grant or recognize refugee status has been vested in an independent administrative authority, the Commissioner General for Refugees and Stateless Persons, and his deputies. Under the previous provisions, such authority was exercised by the representative in Belgium of the United Nations High Commissioner for Refugees and was delegated by the Minister for Foreign Affairs. The new Act completely terminates this

delegation of powers. The Commissioner General also issues preliminary opinions on certain administrative measures concerning applicants for refugee status. Decisions taken by him as to the substance of applications for asylum must be justified and appeals against them may be brought before the Standing Committee for Appeals by Refugees. Any appeal against a decision of the Commissioner General must be lodged within 30 days of notification of the decision. During that time, execution of the decision is suspended.

38. The Act of 18 July 1991 modified the membership of the Standing Committee for Appeals by Refugees. It now consists, for each language chamber, of a chairman, a judge, and the representative in Belgium of the United Nations High Commissioner for Refugees. The Committee is empowered to hear appeals against decisions by the Commissioner General. An alien appearing before the Committee may be assisted or represented by a lawyer. If he does not have the necessary means, defence counsel will be appointed by the Advice and Defence Office. Proceedings are conducted orally. If the alien does not understand either of the national languages, the services of an interpreter are used. The Committee may hear witnesses. The alien and his lawyer have access to the papers in the case, with the exception of documents which the Chairman of the Committee declares confidential. The alien who has entered an appeal against a decision of the Commissioner General may in addition, by separate application, request the Standing Committee on Appeals to stay the execution of the decision contested. The new Refugees Act, of 1991, is designed to streamline procedures while maintaining the necessary balance between the rights of applicants for refugee status and the State's concern at the growing number of asylum requests which are patently improper or intended to gain time.

39. With regard to the admissibility of requests for asylum, the Act introduces the following amendments:

(a) A new obligation is imposed upon the asylum seeker, who is now required to elect domicile in Belgium at an address to which all notifications may validly be sent;

(b) The restrictions upon conditions of entry, as laid down by the 1980 Act, now include another which permits the Minister of Justice or his representative not to authorize entry into Belgium, or to issue an order for refoulement, in the case of an alien who is from a country from which at least 5 per cent of asylum seekers came during the preceding calendar year and it appears from the latest annual report by the Commissioner General for Refugees and Stateless Persons that refugee status was granted to asylum seekers from that country in the case of less than 5 per cent of the final decisions adopted, unless the alien produces evidence of a serious threat to his life or freedom within the meaning of the Convention relating to the Status of Refugees. Having obtained the opinion of the Commissioner General, the Crown, by Royal Decree deliberated in the Council of Ministers, determines the date of entry into force and the duration of applicability of this provision. Subject to the same conditions, the Crown may, for a period determined by it, suspend the provision either for all countries from which asylum seekers come or for one or more such countries;

(c) New reasons for forfeiting the status of applicant for refugee status are established in the new Act with a view to meeting the numerous situations in which the applicant for refugee status deliberately evades the procedure by impeding it from taking its course. In such cases the individual concerned is considered to have withdrawn his application for refugee status and is treated under the general rules pertaining to aliens;

(d) The maintenance, in a specific place at the border, of an asylum seeker who has entered Belgium by irregular means. The new Act provides a legal basis for the practice whereby applicants for refugee status are kept in a specific place at the border while the admissibility of their request is being considered. Maintenance in a specific place is likewise provided for with respect to aliens against whom an order of refoulement can be issued under ordinary law. The duration of maintenance in a specific place at the border may not exceed two months. Upon expiry of that time limit, the individual concerned receives authorization to enter the country.

40. Under the 1984 Act concerning certain aspects of the status of aliens, the Crown, on the proposal of the Minister of Justice approved by the Councils of the Communities concerned and the Governor of the Province, can restrict the establishment in certain communes of aliens other than nationals of EEC countries or nationals of equivalent status. The measure affects only new immigrants and is not applied in cases of family reunion. This restriction upon the free choice of the place of residence is not exclusively based on the density of the foreign population but on other difficulties which a commune may have to face, viz. a combination of factors genuinely detrimental to living conditions in the commune (difficult economic situation, old or run-down housing, lack of infrastructures, large foreign population finding it difficult to integrate).

41. With regard to limitations on temporary or permanent residence of aliens in certain communes, it will be noted that under the new Act of 1991, aliens coming to Belgium lawfully in order to study will now be free to choose their place of residence in any commune in the country. The former legal provision governing such cases has been replaced by one which stipulates that the Crown may, on the proposal of the Minister of Justice, by decree deliberated in the Council of Ministers, prohibit, as a general measure and for a specific period, aliens other than EEC nationals and other than those authorized to reside in the country for more than three months for the purpose of study, from residing or establishing themselves in certain communes if the growth in the foreign population in such communes is deemed detrimental to the public interest.

(e) Remedies available to the alien

42. In addition to appealing to the administrative authority which took the decision in his case, the alien can also submit an application for review to the Minister of Justice, who must rule on the application after obtaining the views of the Aliens Advisory Commission. Furthermore, in the event of an application to quash a deportation or expulsion order the Council of State may order a stay of execution if it seems that the arguments adduced in the appeal could lead to the order being rescinded and immediate enforcement of the

measure might cause the applicant harm that would be difficult to remedy. Lastly, appeal to the courts, and in particular to the Correctional Court in private sitting, may be made in respect of any measure involving deprivation of liberty pursuant to the law.

43. In the case of refugees, a special appeal known as "Urgent request for review" may be lodged with the Commissioner General for Refugees and Stateless Persons against any decision involving refoulement or refusal of the right of temporary residence in respect of an applicant for refugee status.

44. Any administrative decision taken with respect to an alien must, of course, state the reasons on which it is based and must be notified to the person concerned, together with an indication of the remedies provided by law and the time limit for invoking them.

(f) Criminal law

45. Compared with previous laws, the penalties under the new Act are less severe. Only an alien who, without having been authorized to do so by the Minister of Justice, returns to Belgium after he has been deported or expelled is liable to the heaviest sentence, namely, a maximum of one year's imprisonment. Other offences constituting illegal residence and breach of the restrictions on freedom of movement or residence throughout Belgium are punishable by lighter sentences, except in cases of recidivism. Moreover, the Act of 14 July 1987 introduced a series of obligations in connection with the transport of aliens. Failure to fulfil those obligations is punishable under criminal law, and the carrier may also be held liable to pay the costs of the non-admissible alien's residence and repatriation.

## D. Legislative provisions concerning the acquisition of Belgian nationality

### 1. Acquisition of nationality by an alien

46. In accordance with the Belgian Nationality Code, as established by the Act of 28 June 1984, an alien may acquire Belgian nationality in any one of four ways, namely, by attribution, option, marriage or naturalization. This Code fixes the age of majority at 18.

(a) Acquisition by attribution

47. Under article 11 of the Code, the parent (father or mother) born in Belgium may make a declaration requesting the attribution of Belgian nationality to his or her child, also born in Belgium, before the child reaches the age of 12.

(b) Acquisition by option

48. Under articles 13 to 15, a child who was born in Belgium of alien parents or who lived in Belgium for at least one year before the age of 6 may opt for Belgian nationality. However, he must be between 18 and 22 years of age and must satisfy certain residence requirements. The court of first instance that

handles the application conducts an inquiry to determine the existence of any serious impediments and the applicant's desire for integration in Belgian society. Rejection of the application must be substantiated and justified by the court.

(c) Acquisition by marriage

49. Article 16 sets out the procedure by which nationality may be acquired by marriage: the foreign spouse of a Belgian national may, on the basis of a declaration, become Belgian providing that, at the time of the declaration, the spouses have lived together for at least six months.

(d) Acquisition by naturalization

50. Articles 18 to 21 make a distinction between ordinary naturalization and unrestricted naturalization. In the case of ordinary naturalization, the applicant must be over 18 years of age and have been resident in Belgium for 5 years (3 years if he is stateless or a refugee). The Crown Prosecutor conducts the inquiry referred to in article 15, paragraph 2 to determine the existence of any serious circumstances and the applicant's desire for integration in Belgian society. In order to obtain unrestricted naturalization, the applicant must be over 25 years of age, satisfy the requirements laid down for the acquisition of ordinary naturalization, and have rendered important services to Belgium or be in a position to do so by virtue of his ability and talents, or have acquired Belgian nationality five years previously by marriage or by ordinary naturalization. In both cases, naturalization is voted by the legislature. Ordinary naturalization does not confer the political rights for which unrestricted naturalization is required by the Constitution or the relevant laws, namely, eligibility to stand for Parliament and provincial councils.

51. This requirement has been modified as a result of the changes to the Constitution made in February and April 1991. The constitutional provision stating that unrestricted naturalization alone places an alien on an equal footing with a Belgian as regards the exercise of political rights has been abrogated. Moreover, the mere fact of being Belgian entitles a person to stand for election to the Chamber of Representatives or to become a Minister, whereas previously these possibilities were offered only to Belgians by birth or to persons who had acquired Belgian nationality on the basis of unrestricted naturalization. The various laws which still make a distinction between the two types of naturalization that have now been done away with will be brought into line with these changes to the Constitution; the Government has prepared draft legislation on the subject.

2. Acquisition of nationality by immigrants

52. On 13 June 1991 an Act was adopted (Moniteur belge of 3 September 1991) with a view to introducing into the Belgian Nationality Code provisions making it easier for second- and third-generation immigrants to acquire Belgian nationality. In view of the complex and multidisciplinary aspects of Belgium's immigration policy, acquisition of Belgian nationality is one of the factors capable of fostering the integration process. In the case of the third generation, it may be assumed that the child's link with the national

community is, by virtue of his family's economic, social and cultural integration, sufficiently strong, and therefore effective, for the Belgian Nationality Code to recognize the principle of automatic acquisition of nationality at birth. This practice is, moreover, followed in several European countries. In the case of second-generation children, it was found necessary to maintain the requirement of a declaration prior to the acquisition of Belgian nationality. This evidences the readiness of the parents or of the child himself for integration in Belgian society, by assuming the resulting obligations and, at the same time, enjoying the rights conferred by nationality.

53. If these objectives are to be attained, procedures must be streamlined and the approval of the judicial authorities at present required in connection with acquisition of naturalization by option must be done away with. On the other hand, the procedure does allow objections to be made; the law specifies the modalities of this procedure according as the declaration is made by the parents or by the person concerned. The new legislative provisions may be summarized as follows:

(a) With respect to measures applicable to third-generation children, article 1 of the Act enunciates the principle that a child born in Belgium of a parent who was himself born in Belgium and whose principal residence was in Belgium for a period of 5 years during the 10 years that preceded the birth of the child, is Belgian. This article contains similar provisions in respect of an adopted child;

(b) In the case of second-generation children, a child born in Belgium may acquire Belgian nationality simply on the basis of a declaration made before a Civil Registry official at the place of his principal residence. This may be done either on the initiative of the child's parents if their principal residence has been in Belgium during the 10 years preceding the declaration, if the child's principal residence has also been in Belgium since he was born and he has not reached the age of 12, or on the initiative of a child between the ages of 18 and 30 if he has lived in Belgium since he was born.

54. Owing to the importance of this step, a joint declaration by the two parents is required. However, the law makes allowance for certain circumstances, such as the death or absence of one of the parents, the inability of one of the parents to express his or her wishes, or the establishment of affiliation in respect of only one of the adoptive parents in the event of adoption of the child by one person. A declaration by one of the parents is sufficient if the other is resident abroad and consents to the attribution of nationality to the child. If consent is refused, the parent makes a declaration which must be endorsed by the court of first instance if the refusal is improper and if the sole purpose of the declaration is to enable the child to acquire Belgian nationality.

55. The Government considered that, in view of the minimum and maximum ages for military or alternative service, which is one of the obligations that has to be assumed by all Belgian citizens, persons between 18 and 30 years of age should be allowed to make the declaration. The Act reflects the desire not to create any inequality in this connection in relation to Belgians by birth.

Furthermore, it seemed desirable to extend the period during which the declaration could be made in order to enable young second-generation immigrants to throw off, if necessary, any cultural or family influences that might prevent them from taking steps to acquire Belgian nationality. An active professional life or the acquisition of a higher education are factors likely to make a person appreciate the possibility of becoming Belgian.

56. The declaration of the parents or of the child should be interpreted as a presumption of integration. However, account should also be taken of any serious acts committed by a person between 18 and 30 years of age making a declaration which in a sense would negate this presumption; examples of such acts include serious offences, whether punishable or not in Belgium or abroad, espionage, a breach of State security, terrorist activities, or persistent refusal to respect Belgian laws. When the parents make the declaration on behalf of a child who is under 12 years of age, the Prosecutor's Office may enter an objection if it appears that the purpose of the declaration is other than the child's interest in acquiring Belgian nationality.

57. Since the children of third-generation immigrants are automatically attributed Belgian nationality, the Act makes it impossible for them - just like Belgians who acquired their nationality through a Belgian parent on the day of their birth - to be stripped of their nationality. Article 6 of the Act states that the entry into force of article 1 (four months after publication in the Moniteur belge) does not have the effect of conferring Belgian nationality on an alien who at that time was 18 years of age. For this reason, children born or adopted in Belgium of parents born in Belgium and under the age of 18 at the time of the entry into force of the Act automatically become Belgian.

58. As regards the potential impact of these new measures, the number of third-generation persons under the age of 18 is estimated at 25,000 to 40,000. With respect to the second generation, it is considered that the declaration could be made by 75,000 to 90,000 aliens aged between 18 and 30. Declarations by parents on behalf of their children could, in theory, be made on behalf of 4,000 to 6,000 new-born children per year.

## II. POLITICAL RIGHTS

59. The following points should be considered in relation to the exercise of political rights: (a) the right to vote in local elections; (b) representation through advisory councils and other forms of participation in public life at the local level; and (c) access to public service employment.

### A. Right to vote in local elections

60. In the case of nationals of States members of the Common Market, on 2 June 1988 the Commission of the European Communities submitted to the Council a Proposal for a Directive on voting rights for Community nationals in local elections in their Member State of residence. This initiative reflects one of the objectives pursued by the European Economic Community, namely, the abolition as between Member States, of obstacles to freedom of movement for persons, the legal basis being article 235 of the Treaty of Rome. The

European Parliament expressed a positive opinion concerning the draft on 2 March 1989 and the Economic and Social Committee also expressed a favourable opinion on 25 January 1989. On the basis of these opinions, on 16 January 1991 the Commission submitted an amended Proposal for a Directive to the Council on voting rights for Community nationals in local elections in their Member State of residence.

61. The Council set up a working group to examine the Commission's amended proposal. The Council of Ministers of the European Communities has not yet reached a decision on this proposal. Under article 2 of the proposal, Member States are to grant nationals of the other Member States recognized as residing on their territory the right to vote and to stand for election in local elections in the municipality in which they are resident, subject to the conditions set out in articles 3 to 6 of the Directive relating to the right to vote and articles 8 and 9 concerning eligibility.

62. Articles 3 to 6 and 8 and 9 read as follows:

"Article 3

1. Nationals of the other Member States who intend to exercise the right to vote referred to in Article 2 above shall make application to the authorities responsible for elections in the municipality of residence for entry on the municipal electoral register.

2. For this purpose, such nationals shall produce a document issued by a consulate of their Member State of origin certifying that:

   - they have not been deprived of their civic rights in their Member State of origin, and

   - they can no longer exercise the right to vote in local elections in their Member State of nationality, either by virtue of residence in another Member State or because they have asked to be transferred from the electoral register of the municipality in which they were previously registered, with a view to exercising the right to vote in their municipality of residence."

"Article 4

1. Any national of another Member State may apply for entry on the electoral register of his municipality of residence following a period of continuous residence in the host Member State of not less than the term of office of a municipal council in the case of the right to vote and two terms of office in respect of the right to stand for election.

   Proof of residence shall be provided by a document certifying residence issued by the authorities of the host Member State. The period of residence shall run from the date of application for this document.

The length of residence prior to the entry into force of this Directive shall be taken into account for this purpose.

Absences due to holidays or force majeure (illness, maternity leave, study, military service, etc.) are not considered as interrupting the period of residence.

2. Entry on the electoral register can be made only in the municipality in which the applicant is actually resident and shall be subject to the rules laid down by national legislation, in particular as regards the minimum period of residence in the municipality and the deadlines for applying for entry on the electoral register."

"Article 5

The provisions laid down by national legislation in the Member State of residence as regards:

- minimum age;
- disabilities;
- ineligibility; and
- incompatibility

for the purpose of local elections shall apply equally to the nationals of other Member States."

"Article 6

A national of another Member State entered on a municipal electoral register in his Member State of residence shall be subject to the electoral requirements applicable to nationals of that Member State, in particular as regards provisions which make voting compulsory."

"Article 8

If the proportion of nationals of the other Member States resident in a Member State exceeds 20 per cent of the total population, that Member State shall be entitled to waive application of the Directive to the first general local elections to which it would otherwise apply under article 11.

After the elections, the Commission shall report to the Council and, where appropriate, propose whatever measures might be needed for gradual application of the Directive."

"Article 9

Member States may stipulate that, in the first two general local elections to which the provisions of this Directive apply, nationals of other Member States elected as municipal councillors may not occupy more than one quarter of the seats on a municipal council."

63. As to granting the right to vote to the nationals of States other than States members of the European Economic Community, Belgian positive law does not at this time contain any applicable national or supranational regulations.

64. It may be noted at this point that under article 4 of the Constitution, which has not been submitted for revision, enjoyment of political rights at every level subject to the possession of Belgian nationality. However, the Declaration of 8 November 1987 concerning the revision of the Constitution, published in the Moniteur belge of 9 November 1987, provides for the addition to title III, chapter III of our Constitution of a new article 107 bis concerning the relationship between the norms of domestic law and those of international and supranational law. Preparatory work on this subject reveals that, on the basis of an international or supranational norm binding upon Belgium, aliens resident in our country could, subject to certain conditions, such as reciprocity in the case of a convention, be granted the right to exercise certain political rights.

65. It is also worth mentioning that the preliminary draft of a convention has been prepared by the Steering Committee for local and regional authorities set up under the Council of Europe on the participation of aliens in public life at the local level. This document was transmitted to the General Secretariat of the Council on 5 October 1989 and is at present being examined. Articles 6 and 7 of this draft, which deal with the right to vote in local elections, read as follows:

Article 6

1. Each Party undertakes, subject to the provisions of article 9, to grant the right to vote and to stand for election in local elections to all resident aliens, provided that they satisfy the conditions applicable to nationals and, furthermore, have resided legally and continuously in the State in question during the five years preceding the elections.

2. A Contracting State may, however, declare, at the time it deposits its instrument of ratification, acceptance, approval or accession, that it intends, for a specific period indicated in the declaration, to restrict the application of paragraph 1 to the right to vote.

Article 7

Each Party may, unilaterally or in the framework of bilateral or multilateral agreements, stipulate that the residence requirements specified in article 6 are satisfied by a shorter period of residence.

66. Article 9, referred to in article 6 above, authorizes the contracting parties to restrict the rights referred to in article 6 in time of war or in the event of another public danger that threatens the survival of the nation, but only to the extent required by the situation. Under this article, however, the right of resident aliens to vote and to stand for election at the local level is not made conditional on reciprocity.

B. Representation through advisory councils and other forms of participation in public life at the local level

67. This matter is not governed by any legal provisions. Several communes have, on their own initiative, established such advisory councils, whose members are in most cases elected by the immigrant population duly registered in the commune. An Aliens Advisory Council was set up under article 31 of the Act of 15 December 1981. Its purpose is to give substantiated opinions, in advance, on all government and private bills and decrees relating to the entry, temporary and permanent residence and removal of aliens referred to it by the President of one of the two legislative chambers or one of the cultural councils. Half the Advisory Council consists of representatives of several ministerial departments and the other half of Belgian and foreign representatives of organizations concerned with protection of the interests of immigrant workers and of recognized student bodies. The relevant ministers may consult the Council on any general matter relating to these questions and the Council can, on its own initiative, give its opinion on the same matters to the legislature, cultural councils and ministers. A Royal Decree of 28 July 1981 specified the composition of the Council, its work procedures and its operation.

68. The 1980 Act established an Aliens Advisory Commission, a legal advisory body that provides the Minister of Justice with advice in cases specified by law; the Minister may also request the Commission's opinion before taking any decision concerning an alien.

69. Flemish Executive Order of 3 March 1982 created a Higher Flemish Council for Migrants, whose task is to give opinions to the Flemish Executive on all matters relating to migrants (21 members, of whom 7 are appointed on the proposal of migrants' associations).

70. French Community Executive Order of 9 October 1986 set up an Advisory Council for persons of foreign origin in the French Community. This body has 38 members, of whom 20 are appointed from among candidates nominated either by organizations representing immigrant communities or by organizations which consist of Belgians and/or immigrants and which develop activities in conjunction with such communities. The task of this Advisory Council is to examine the social, cultural, legal, economic and administrative aspects of problems encountered by immigrants or persons of foreign origin, as well as those raised by living side-by-side in the French Community, and to formulate opinions on these matters. The French Community has also, by an Executive Order dated 21 February 1989, established an Advisory Commission for the integration of young persons of foreign origin.

C. Access to employment in the public service

71. Under Belgium's laws and regulations, only Belgians enjoy the right of admission to public employment. Article 48, paragraph 4, of the Treaty of Rome states that the principles of freedom of movement for workers and of non-discrimination do not apply to employment in the public service. However, the Court of Justice of the European Communities has considerably reduced the scope of this provision of the Treaty in respect of Community nationals. In

its judgement of 17 December 1980, the Court of Justice decided that the posts referred to in article 48, paragraph 4, are those which "involve direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities". It is therefore necessary in each case to determine "whether or not the posts in question are typical of the specific activities of the public service in so far as the exercise of powers conferred by public law and responsibility for safeguarding the general interests of the State are vested in it".

72. On the basis of the judgement of the Court of Justice, on 5 January 1988 the Commission of the European Communities transmitted to member States a communication which can be summarized as follows:

1. Article 48, paragraph 4, of the Treaty concerns the specific functions of the State or of other legal person under public law such as the preparation, execution and monitoring of juridical acts, and the supervision of bodies subordinate to the above mentioned institutions.

2. The Commission considers that activities in certain sectors, such as water or power distribution and telecommunications, cannot be regarded as specific public service activities.

3. The Commission announces that it will adopt measures relating to all posts in sectors not covered by article 48, paragraph 4, of the Treaty. It adds that any discrimination on grounds of nationality with regard to access to subordinate posts in the public service cannot, a priori, be justified."

73. With a view to bringing Belgian law into line with the requirements of Community law as interpreted by the Luxembourg Court of Justice, article 6 of the Constitution has been submitted for revision and a proposal reading as follows has been submitted to the Bureau of Parliament:

"Single article

Article 6, second paragraph, second sentence, of the Constitution is replaced by the following:

"They alone may occupy civilian and military positions which entail the exercise of public authority and protection of the general interest, subject to any exceptions indicated in a law concerning special cases".

74. Furthermore, positive steps have been taken by the Minister of the Interior to facilitate access to certain communal posts for foreigners. In a circular that was addressed to the governors of provinces and appeared in the Moniteur belge, the Minister of the Interior stated that "the law is such that communes may, subject to the approval of the supervisory authority, hire staff on a contractual basis. However, this procedure is exceptional and does not apply to positions of authority."

75. The principle in article 6 of the Constitution whereby public service posts are reserved for Belgian nationals applies only to established posts. The nationality requirement does not therefore, apply to persons engaged under a labour contract that the authorities can terminate at any time. As a result, the authorities can, in respect of certain jobs, take on persons who are better acquainted with the problems of specific groups of the non-Belgian population.

76. In accordance with article 48, paragraph 4, of the Treaty establishing the European Economic Community and with the case law of the Court of Justice, established posts in the public service may be reserved for Belgians only if they entail typical duties involved in exercising public authority and safeguarding the general interests of the State - to which the functions of municipal administrations should be assimilated. Apart from these instances, the authorities may not refuse to appoint nationals of the EEC to established posts.

77. The harmonized laws on the use of languages in administrative matters may not be waived.

78. Moreover, attention is drawn to a number of measures which, although not of a legal or regulatory nature, effectively help to curb all forms of racial discrimination and to promote the integration of immigrant populations. In this context, mention should be made of the improvements made in training police officers, who now attend a course on human rights organized by the League of Human Rights for the Ministry of the Interior. Part of this course, entitled "Points requiring special attention", deals with racism. Police training schools also give a course on "Contacts with the immigrant population", which has been introduced on the initiative of the Minister of the Interior.

79. Lastly - and again on the initiative of the Minister of the Interior - a coordinating body has been created. This body, which consists of five different parties, namely, the administrative authorities (the burgomaster), the Department of Public Prosecutions and the three major police branches (municipal police, Gendarmerie and judicial police), makes it easier to coordinate the activities of police bodies in the field and to conclude agreements on improving the prevention of petty offences.

## III. CONSTITUTIONAL FREEDOMS

### A. Freedom of opinion, assembly and association and also to submit petitions and hold referendums

80. The rights enumerated in title II of the 1931 Belgian Constitution derive from the philosophical and political ideas of the eighteenth century, as embodied in the United States and French Constitutions and in the 1789 Declaration of the Rights of Man and of Citizens. The Belgian system of civil liberties aims to ensure respect for three main principles: personal security, equality before the law and freedom of opinion in general.

81. To make civil liberties direct and automatic, the framers of the Belgian Constitution proscribe such preventive measures as might constrain the freedom of citizens, prior to the exercise of their rights, and in addition afforded exclusive protection of those rights by the legislature. The exercise of civil liberties is not, therefore, subject to any prior control by the public authorities except in the case of meetings in public places which may be subject to such control. Only offences committed during the exercise of the rights in question are punishable and these come within the jurisdiction of the judicial authorities. The Belgian Criminal Code defines a number of crimes or offences against the free exercise of constitutional rights. These provisions enable the courts to impose punishment for offences against freedom of religion (violence, threats, impediment of worship, outrage against a minister of religion or desecration of objects of worship), as well as crimes or offences committed by public officials against the free exercise of rights guaranteed by the Constitution (illegal detention, violation of the home or any other arbitrary act that infringes constitutional rights). Other provisions of the Criminal Code and criminal law in general protect citizens against infringements of their fundamental rights (such as to private property, physical integrity, and so on).

82. Article 128 of the Constitution stipulates that "any alien who is on Belgian territory shall enjoy the protection accorded to persons and property, save for the cases prescribed by law". Article 11 of the Civil Code states that "an alien shall enjoy in Belgium all the civil rights conferred upon Belgians, save for the cases prescribed by law". An alien who is authorized to take up permanent residence in the Kingdom and who is entered on the population register enjoys all the civil rights conferred upon Belgians for as long as he continues to reside in Belgium.

83. Article 20 of the Act of 15 December 1980 on the entry, temporary or permanent residence and removal of aliens provides that if an alien exercises freedom of opinion or freedom of peaceful assembly or association in accordance with the law, no complaint may be made against him. Subject to the restrictions under the above-mentioned Act regarding entry and temporary or permanent residence, aliens enjoy the freedoms granted to Belgian citizens, including freedom of opinion, freedom of religion and other constitutional freedoms at whatever institutional level they are exercised.

84. The right of petition is governed by articles 21 and 43 of the Constitution. Article 21 guarantees everyone the right to address petitions signed by one or more persons to the public authorities. Such petitions may concern any local, regional or national problem, but they must always be signed by the individual. Petitions may not be submitted under a collective name, i.e., by associations, or anonymously, a possibility that is reserved for the constituted authorities, i.e., authorities established under the Constitution and the law. The parliamentary bodies receive many petitions each year. To avoid physical pressure from being brought to bear on the elected representatives, article 43 of the Constitution prohibits the personal submission of petitions to the Houses of Parliament. This article furthermore establishes the principle that ministers are responsibile to the Parliament in respect of petitions addressed to the Houses.

85. There is no legal provision for referendums either by the communes or at the national level. However, there is nothing to stop local authorities from holding optional referendums to obtain the public's views on any matter of interest to the commune. Although quite rare, commune referendums may be freely organized by the commune authorities, either at their own initiative or at the request of a number of citizens.

### B. Social legislation and migrant workers; right to work; work permits

86. There is no discrimination between Belgian workers and foreign workers if the latter hold residence and work permits, the exception being employment in the civil service. The general principle of equality of rights of all workers on the national labour market is not written into any particular act, since the law applies to all: the right to work, the right to equality in employment and conditions of work, the right to equal pay, the right to equality in social security (unemployment, sickness or disablement, family allowances, industrial accidents, retirement and survivor's benefits) are guaranteed to all persons working in Belgian territory. Foreign workers also have the same rights as Belgian workers in respect of electing or standing for election to social bodies and trade union delegations.

87. Foreign workers have the same opportunity as Belgian workers to secure the enforcement of their rights in litigation concerning, for example, a case of racial discrimination in employment, conditions of work or social security matters. No distinction as to nationality is ever made when cases of infringement of the rights granted to all workers are brought before the competent administrative authorities or the courts.

88. The legislature determines the conditions under which a foreigner shall enjoy social rights, a matter that is furthermore governed by various international conventions. The Act of 19 February 1965 concerning the exercise of independent professional activities by aliens stipulates that any foreigner who carries on an independent profit-making activity in Belgium must hold a professional identity card (carte professionnelle) issued by the Minister for Small Firms and Traders.

89. Under the Royal Decree of 20 July 1967 concerning the employment of aliens as manual or other workers, no employer may in principle take on a foreign worker without having first obtained authorization to do so from the minister whose responsibilities include employment. Similarly, no foreign worker may in principle offer his services in Belgium without having first obtained a work permit; failure to meet these obligations constitutes an offence.

#### Right to social welfare

90. The Act of 8 July 1976 on publicly-run social welfare centres established that everyone has the right to social welfare the purpose of which is to ensure that each individual is able to lead a life consistent with human dignity. The right to social welfare, which is universally applicabile, is therefore conceived as an inalienable right founded on recognition of the

humanity of every individual. For a person to be able to take advantage of this right, the only criterion to be considered is whether the person no longer leads a life consistent with human dignity. Article 57 of the Act states that the purpose of the social welfare centre is to provide such persons or families with the assistance due from the community. Article 71 of the Act furthermore entitles any person to seek redress against a decision on assistance to him by the social welfare centre. This right of appeal can be exercised before the provincial appeals boards, which act as administrative courts and are required, under article 97 of the Constitution, to substantiate their decisions. The welfare centre must, under article 72 of the Act, comply immediately with the appeals board's decision. Moreover, no argument may serve to justify non-execution, and no action may be allowed to obstruct the enforcement of the judgement, in either administrative or civil proceedings, such judgement remaining valid so long as the decision is not set aside.

91. The principle of a guaranteed minimum income was recognized in Belgium by the Act of 7 August 1974, which instituted the right to some minimum means of support. This Act marks the culmination of a long period of evolution in social welfare in Belgium which led the legislature to make a rigorous definition of a genuine subjective right comparable to the rights to social security benefits. Under article 10 of the Act, appeals against decisions by the social welfare centres can be made to an independent judicial authority, the labour tribunal. The entitlement to some minimum means of support was conceived as a residuary right and is designed in essence to guarantee a minimum income to categories of the population excluded from the social security systems, for example because they have little or no connection with work. The Act provides that, before being granted and receiving some minimum means of support, the person concerned must exercise his rights to any other social benefits to which he may be entitled under Belgian or foreign legislation. In practice the courts take the view that "some minimum means of support" by definition implies fixing by law an amount of money below which human dignity or even physical survival is at risk. From this standpoint, as also in the minds of the lawmakers, the said minimum is a living minimum in society, established with a view to safeguarding human dignity. It is also recognized that legislation on some minimum means of support is a matter of public policy.

### C. Religions. Right to freedom of religion

92. As regards religion, the Belgian Constitution recognizes freedom of religion and the principle of the separation of Church and State. Articles 14 and 15 of the Constitution affirm that freedom of religion and the right to practise it in public are guaranteed. It is also recognized that no one may be forced to participate in any way whatsoever in the acts and ceremonies of a particular religion or to observe the days of rest.

93. With regard to the appointment and supervision of ministers of religion, in Belgium the Church is completely independent of the State. Responsibility for appointing and supervising the activities of ministers rests exclusively with the official authorities of each religion. Under article 117 of the Constitution the salaries and pensions of ministers of religion are paid by the State. Pursuant to this article, the Act of 2 August 1974 relating to the

salaries of certain public officials and of ministers of religion grants an annual salary to ministers of the Catholic, Protestant-Evangelical, Anglican and Jewish religions. They likewise receive, on the conditions applicable to State employees, a housing or residence allowance, family allowances and holiday pay. As for the temporal aspects of religion, the Act of 4 March 1871 provides for governing bodies with responsibility in these matters. These bodies are known as church councils in the case of the Catholic religion and have their equivalents in the Protestant, Anglican and Jewish religions.

94. The Orthodox religion was legally recognized by the Act of 17 April 1985, which recognizes the governing bodies responsible for the temporal aspects of that religion. The Act of 12 November 1987, amending the Act of 2 August 1974, relates to the salaries of certain public officials and of ministers of the Orthodox religion. The Royal Decree of 15 March 1988 provides for the organization of church councils of the Orthodox religion.

95. With regard to the Islamic religion, the Belgian Government has been confronted with major organizational difficulties resulting both from the lack of a hierarchy within that religion and from the fact that the Islamic and Cultural Centre is not representative of the various Islamic communities and movements in Belgium. A provisional Council of Elders was established pursuant to a decision by the Council of Ministers of 30 March 1990. Its task is to present the Minister of Justice with proposals for a definitive solution to the problems associated with the recognition of Islam. To deal with problems such as the reappointment of teachers of the Islamic religion employed during the school year 1989/90 or the appointment of new teachers of that religion, the Government decided, on the basis of a proposal from the provisional Council of Elders for organization of the Islamic religion in Belgium, to recognize for the school year 1990/91 a Technical Committee comprising four representatives of the provisional Council of Elders and six teachers of the Islamic religion who meet the Council's criteria, which include knowledge of one of our national languages. This Technical Committee is assisted by two officials from the community educational authorities (one French-speaking and the other Dutch-speaking).

96. To ensure that the requirements concerning sound knowledge of the language of instruction and ability to organize courses in the Islamic religion can be reasonably satisfied in the next few years, it was decided, in consultation with the three community education ministers, to introduce an optional course for teachers in some existing training colleges. As regards temporary residence and permission to take up permanent residence after five years of regular and uninterrupted residence, teachers of the Islamic religion are permitted to take up permanent residence if they were initially allowed to enter for a temporary stay. Such permission is normally granted, except in certain cases where the safeguarding of public order is concerned.

## D. Right to education

97. Article 17 of the Constitution establishes the principle of freedom of education - a matter which, following the recent constitutional changes resulting from State reform, falls very largely within the competence of the Communities. Under the principle of freedom of education, the organization of educational institutions cannot be subject to any restrictive measure; schools

may be established and organized without any link with the official authorities, but they must comply with the statutes and regulations if they want to issue recognized diplomas and receive subsidies from the Communities.

98. Following the signing of the Schools Agreement, an Act dated 29 May 1959, known by that name forms the basis for organizing all education - other than at the university level - into State education or State-subsidized education. Article 17 of the Constitution, as amended on 15 July 1988, reaffirms the basic principles of the Act. The notion of "organizing authority" is fundamental to the system of education in Belgium: "The organizing authority of an educational institution is the authority, corporate body (bodies) or private individual (individuals) having responsibility for that institution" (Act of 29 May 1959, art. 2, para. 3). In compliance with the statutes and regulations, each organizing authority may determine its curricula, teaching methods (including assessment of pupils) and organization, under the supervision of a body of inspectors and examiners. In accordance with the official provisions designed to ensure equal treatment of men and women, most schools are mixed; a few non-mixed schools still exist, however, particularly in independent education.

99. This constitutional freedom means that systems of education can be organized and run by the Communities (prior to the revision of the State Constitution); by the provinces, communes (or associations of communes) and other corporate bodies; and by private individuals, de facto associations and non-profit-making associations. Education in the first two categories (run by the public authorities) is called official education, while education organized by the third category is called independent education. Education run by the provinces, communes and organizations of the third category is subsidized by the Communities. The statutes and regulations now generally refer to three systems of education:

(a) The system of Community (formerly State) schools; this education is required by the Constitution to observe special rules of neutrality, which continues to be defined in negative terms (official or community education);

(b) The system of schools run by provinces and communes (official subsidized education);

(c) The system of independent schools (independent subsidized education); this system includes the schools whose organizing authorities operate on a religious basis (independent religious schools), schools in which education is guided by the principles of freedom of conscience, and schools which do not operate on any declared religious or philosophical basis.

100. Schools run by Catholic organizing authorities are by far the most numerous of the independent educational institutions. It should also be noted that, besides the independent subsidized schools, there are some private unsubsidized schools. Schools run by the Communities (State) must, under the Constitution (art. 17) provide neutral education, which in particular means respect for the philosophical, ideological and religious views of parents and pupils by the teaching staff, of which at least three quarters must have diplomas in official and neutral education. Furthermore, the schools run by

the public authorities must, until the end of compulsory education (age 18), offer a choice between instruction in recognized religions and the teaching of non-religious ethics, this education being funded by the Communities.

101. The Act of 29 May 1959 allows the State to organize pre-school, primary, secondary and higher education and to establish, as required, institutions or sections of institutions for this purpose, in particular to ensure free choice (hence the term "school of free choice"). The State (the Community) must in addition subsidize the institutions or sections of institutions which are organized by the other systems and which comply with the statutory requirements and regulations concerning the organization of studies and the application of the laws on languages.

102. It should be noted that it is possible under the Act of 14 July 1975 to establish pluralistic schools, i.e. schools recognized as such by the Council for Pluralistic Education, a body whose powers, membership and functioning are determined by the Royal Decree of 12 January 1981 and which was set up on 17 November 1986.

103. The Ministers have dual powers, for their respective Communities:

(a) They are the organizing authority for community education and, as such, decide on its structures, curricula and methods; they manage the schools and take every possible step to improve their functioning. However, "if a Community, as organizing authority, wishes to delegate responsibility to one or more autonomous bodies", article 17 of the Constitution, as amended in 1988, permits this to be done by a decree adopted by a two-thirds majority. The Flemish Community has taken advantage of this possibility to set up a new organizing authority for Community education - the Autonome Raad voor het Gemeenschapsonderwijs (Autonomous Council for Community Education).

(b) They apply the regulations to subsidized schools, both independent and official, in accordance with the provisions of the Act of 29 May 1959.

Councils and commissions, most of them established under the statutes or regulations, report to the Ministers on the various problems in education. Such bodies usually exist in each language system but function autonomously.

104. Furthermore, the revision of the Constitution will involve a restructuring of the Administration, which used to come under the central Government. A body of inspectors is responsible for maintaining teaching standards in Community educational institutions, advising members of the staff and contributing to the preparation of the curricula and the development of teaching methods, and in addition it watches over the standard of instruction in official and independent subsidized education. These subsidized organizing authorities in some cases also have their own inspectors.

105. The Act of 19 May 1914 introduced compulsory education for all children between 6 and 12 years of age and stipulated that the upper age limit for compulsory education should be progressively extended to 13 and later 14. That Act was not, however, applied until 1919, after the First World War. In 1970, the average school-leaving age was 15 years and 8 months (the enrolment

rate of the female population being higher at ages 14 and 15 than that of the male population). After 1970, other European countries changed or planned to change the length of compulsory education; as early as 1953 a Government bill was introduced to extend compulsory education to age 15; this was followed by various bills in the 1970s proposing an extension of compulsory education to age 16, at a time when several studies pointed to a link between the level of training and the rate of unemployment.

106. The Act of 29 June 1983 has made it compulsory for minors, without distinction between Belgians and foreigners, to attend school for a period of 12 years beginning with the school year in which the child reaches the age of 6 and ending in the school year in which he reaches the age of 18. Compulsory education is full time until the age of 15 or 16, as the case may be, and comprises primary education (6 or 7 years, depending on the child's needs, or 8 years in exceptional cases) and at least the first two years of full-time secondary education; in no case does full-time compulsory education extend beyond the age of 16. For the school year 1989/90, for example, pupils born on or after 1 January 1971 must complete at least the first two years of secondary education on a full-time basis. If they have completed these first two years, they can give up full-time education as of their fifteenth birthday. If they have not completed the first two years, they may give up full-time education as of their sixteenth birthday. In either case, they must continue with part-time education comprising at least 360 hours/year until 30 June in the year of their sixteenth birthday and at least 240 hours/year until 30 June in the year of their eighteenth birthday.

107. The requirement of compulsory part-time education may be satisfied by pursuing a full education, by continuing education with shorter hours in a centre established for that purpose or by taking a course of recognized training which meets the requirements of compulsory education. Recognized training should be understood to mean the forms of training defined by article 2 of the Act on compulsory education, principally those courses offered by the Secrétariat d'apprentissage des classes moyennes. Young people can also satisfy the compulsory education requirement by receiving an education at home, as long as it meets such conditions as may be set by the Crown. We should note, however, that no decree on the application of the above provisions, although envisaged by law, has so far been issued to supervise compulsory education.

108. Under the Act of 29 June 1983, education is free of charge during the period of compulsory education, this right having been reflected, after the revision of the Constitution in 1988, in article 17; no financial contribution from parents may be required and the Communities bear part of the cost of standard supplies. A provision for travel costs is made for pupils who, during the period of compulsory education, cannot find a school of their choice within a reasonable distance from their home. It should be added that Parliament has set the age of majority at 18, effective 1 May 1990; this now corresponds to the end of the period of compulsory education.

Impact of demographic trends on education

109. With regard to demographic trends, it should be pointed out that the age group (0 to 19 years) has grown smaller since 1975, owing to the decline in the birth rate after 1965. As a result, there was an overall reduction in the number of pupils in primary education after 1971 and in secondary education after 1975-1980. In higher education, the trends are more complex. Births fell from 160,371 in 1964 to 115,790 in 1985, a decrease of nearly 45,000. According to the projections made in recent studies, this decline in the number of births will continue over the next decade. The ageing of the population is more marked in the French Community. These demographic trends need to be emphasized because they have had and will continue to have a major impact on various aspects of education (costs, recruitment of teachers, changes in training and requirements).

## IV. POLICY ON INFORMATION FOR FOREIGNERS IN BELGIUM

110. The Act of 15 December 1980 on the entry, temporary and permanent residence, and removal of aliens, amended by the Acts of 28 June 1984 and 14 July 1987, provides that administrative decisions shall state the reasons on which they are based. They shall be notified to the persons concerned, who shall receive a copy thereof, by the burgomaster of the commune in which the alien is living or by the person appointed by him; they may also be notified by the persons indicated in article 50, with the exception of the Commissioner General for Refugees and Stateless Persons or his representative. If the alien is under arrest, notification shall be made by the prison governor. If the alien is not in Belgium, such notification may be made through the Belgian Embassy or consulate abroad.

111. Article 63 of the Act provides that administrative decisions may give rise either to an urgent request for review, or to an application for review, or to an application to rescind a security measure, or to an appeal to the courts in accordance with the provisions set forth below. Notification of decisions provided for in articles 8, 11, 16, 22, 24, 25, 30, 46, 52, 53, 54, 55, 57, 58, 61, 67 and 73 must be accompanied by an indication of the remedies provided for by law and of the period within which the remedies may be exercised. Furthermore, article 92 of the Act provides for the Act to be translated into languages other than French and Dutch. Translations into German, English and Italian have thus been published in the Moniteur belge, the official gazette of the Kingdom of Belgium.

112. Foreigners, like Belgians, can obtain all relevant information about their social welfare entitlements from the Ministries dealing with social welfare matters or from quasi-public bodies. Under the constraints of the language laws in force in the country, this information is communicated in the national languages of Belgium. However, arrangements for supplying information in the national language of the alien have been made with consulates (which act as intermediaries) and also with trade unions, insurance bodies and government social welfare centres.

113. In order to inform both nationals and aliens about social welfare matters, the Ministry of Social Welfare issues a booklet entitled "Aperçu de la sécurité sociale" (Social welfare overview) which provides a full and

detailed summary of all sectors of the social welfare apparatus. Similarly, the Secretary of State for Europe 1992 and the Secretary of State for Pensions have taken the initiative of informing immigrant workers of their pension entitlements by producing a guide to European pensions known as "12-star pensions".

114. Furthermore, when the social welfare inspectorate conducts an investigation and finds that the individual being investigated does not know either of the national languages, the individual concerned is invited to draft his declaration himself and, if necessary, the services of an interpreter made available by the Minister of Justice are used. In addition, the Belgian Information and Documentation Institute publishes information sheets for foreigners on various matters of particular concern to them.

115. The communes and provinces also make a special effort as regards information by publishing information bulletins for immigrants on various activities in their commune or district, qualifications for eligibility for certain subsidized housing, and so on. In a wider context and at the national level, the number of radio and television broadcasts in foreign languages designed to provide foreign workers and immigrant families with information in their own language on events in their countries of origin as well as, for example, with cultural or entertainment programmes has grown considerably in recent years. Various groups and associations engaged in supplying immigrants with information are subsidized by the Belgian Communities. Numerous associations formed within the various immigrant communities and working on their behalf are engaged in a variety of information activities (advice bureaux, publications, meetings, discussions, etc.) in the legal, social, health, education and other fields. Within the French Community, for example, such associations address their public in French and in the language of origin for the benefit of the first generation immigrants. The associations are subsidized by the French Community's Ministry of Culture and Social Affairs. There are also religious and lay counsellors doing information and training work in immigrant communities in order to facilitate the immigrants' social and cultural integration.

PART II

Article 6

COURT ACTION ON COMPLAINTS

116. The last report (CERD/C/88/Add.5 of 21 October 1983) submitted by Belgium to the Committee for the Elimination of Racial Discrimination contained information on judicial action taken by Belgian courts on complaints about acts of racism and xenophobia lodged under the Act of 30 July 1981. This section of the present report contains a table showing, by legal district, the complaints lodged and the number set aside without any action being taken, convictions on the basis of the law, acquittals and deferrals of action. The available statistics relate to the period from 1981 to 1989. It will be seen from the table that 1,269 complaints were lodged during the reference period in the country's 27 legal districts and that 977 of those complaints were set aside without further action being taken. Twelve complaints led to convictions on the grounds of racism or xenophobia. (Source: parliamentary question to the Minister of Justice on 5 March 1990).

| Complaints | | | | | | |
|---|---|---|---|---|---|---|
| Legal district | 1981 to 1984 | 1985 | 1986 | 1987 | 1988 | 1989 |
| Antwerp | 28 | 11 | 5 | 13 | 9 | 13 |
| Malines | 22 | 17 | 6 | 2 | 5 | 2 |
| Turnhout | 30 | 9 | 6 | 5 | 2 | 12 |
| Hasselt | 25 | 9 | 17 | 19 | 8 | 18 |
| Tongres | 17 | 9 | 6 | 17 | 6 | 6 |
| Brussels | To December 1988 | | | | 421 | |
| Louvain | " " " | | | | 17 | |
| Nivelles | " " " | | | | 41 | |
| Ghent | 70 | 11 | 10 | 3 | 5 | 6 |
| Termonde | 22 | 1 | 11 | 7 | 5 | 7 |
| Audenarde | 2 | 1 | 1 | - | - | 1 |
| Bruges | 5 | - | 4 | 1 | 1 | 3 |
| Ypres | - | - | - | - | - | - |
| Courtrai | 4 | 2 | - | 4 | 3 | 3 |
| Furnes | - | - | 1 | 2 | - | - |
| Liège | 20 | 5 | | 3 | 14 | 15 |
| Huy | - | - | | - | - | - |
| Verviers | 7 | 2 | | - | - | - |
| Arlon | - | - | | - | 1 | - |
| Neufchâteau | - | - | | - | - | - |
| Dinant | 1 | - | | - | 3 | 1 |
| Namur | 7 | 11 | | 3 | 5 | 3 |
| Marche-en-Famenne | - | - | | - | - | - |
| Eupen | - | - | | - | - | - |
| Mons | 16 | 3 | 15 | 4 | 8 | 6 |
| Charleroi | 28 | 8 | 9 | 5 | 5 | 2 |
| Tournai | 6 | 2 | 4 | 5 | 3 | 5 |

| Complaints lodged without further action | | | | | | |
|---|---|---|---|---|---|---|
| Legal district | 1981 to 1984 | 1985 | 1986 | 1987 | 1988 | 1989 |
| Antwerp | 23 | 9 | 5 | 13 | 8 | 11 |
| Malines | 29 | 15 | 5 | 1 | 3 | 1 |
| Turnhout | 25 | 9 | 6 | 5 | 2 | 9 |
| Hasselt | 25 | 8 | 16 | 19 | 8 | 15 |
| Tongres | 13 | 14 | | 17 | 6 | 5 |
| Brussels | To December 1988 | | | | 318 | |
| Louvain | " " " | | | | 13 | |
| Nivelles | " " " | | | | 30 | |
| Ghent | 53 | 2 | 6 | 3 | 5 | 3 |
| Termonde | - | - | 10 | 6 | 4 | 4 |
| Audenarde | - | 1 | 1 | - | - | - |
| Bruges | - | - | 3 | 1 | - | 2 |
| Ypres | - | - | - | - | - | - |
| Courtrai | - | 1 | - | 3 | 1 | - |
| Furnes | - | - | - | 2 | - | - |
| Liège | 16 | 4 | | 2 | 12 | 6 |
| Huy | - | - | | - | - | 1 |
| Verviers | 7 | 2 | | - | - | - |
| Arlon | - | - | | - | 1 | - |
| Neufchâteau | - | - | | - | - | - |
| Dinant | - | - | | - | 2 | 1 |
| Namur | 1 | 10 | | 2 | 4 | 2 |
| Marche-en-Famenne | - | - | | - | - | - |
| Eupen | - | - | | - | - | - |
| Mons | 14 | 3 | 14 | 4 | 8 | 5 |
| Charleroi | 24 | 7 | 4 | 4 | 5 | 2 |
| Tournai | 6 | 2 | 3 | 4 | 3 | 4 |

Decisions (D) - Convictions (C) - Acquittals (L) - Deferrals of action (R)

| Legal district | 1981 to 1984 | 1985 | 1986 | 1987 | 1988 | 1989 |
|---|---|---|---|---|---|---|
| Antwerp | 1 C + 2 L | 1 C | - | 1 D | 1 C | - |
| Malines | 1 D + 2 L | 3 L | - | 1 D | 2 D | - |
| Turnhout | - | - | - | - | - | - |
| Hasselt | - | - | - | - | - | 1 D |
| Tongres | 1 C | - | - | - | - | - |
| Brussels | To December 1988 | | | | 1 C | |
| Louvain | " " " | | | | 1 C | |
| Nivelles | " " " | | | | 1 R | |
| Ghent | 4 C | 2 D | 4 D | - | - | 1 L |
| Termonde | 1 C | - | - | - | - | - |
| Audenarde | - | 1 L | - | - | - | - |
| Bruges | - | - | - | - | - | - |
| Ypres | - | - | - | - | - | - |
| Courtrai | 1 R | - | - | - | - | 1 D |
| Furnes | - | - | - | - | - | - |
| Liège | - | 1 R | | - | - | - |
| Huy | - | - | | - | - | - |
| Verviers | - | - | | - | - | - |
| Arlon | - | - | | - | - | - |
| Neufchâteau | - | - | | - | - | - |
| Dinant | 1 R | - | | - | 1 C | 1 D |
| Namur | - | 1 D | | - | - | - |
| Marche-en-Famenne | - | - | | - | - | - |
| Eupen | - | - | | - | - | - |
| Mons | 2 C | - | - | - | - | - |
| Charleroi | - | - | - | - | - | - |
| Tournai | - | - | - | 1 D | - | - |

PART III

Article 7

I. EDUCATION AND TRAINING

117. At the primary and secondary levels, instruction in human rights is based on the implementation of ministerial circulars which are issued, in particular, on the occasion of Human Rights Day. These circulars stress that human rights concepts must be taught throughout the academic year and not only on the anniversary of the Universal Declaration. The question of human rights is introduced increasingly at all stages of a child's education, the most appropriate teaching techniques being employed for the purpose; in particular, it forms the subject of special lessons given as part of social science courses at a number of secondary education establishments. At the higher education level, human rights are no longer taught exclusively in arts faculties but are touched upon in one way or another in connection with all subjects taught at universities. There is no special education so far as racism is concerned, but the problem is generally a part, at all levels, of the courses, lectures and seminars on human rights.

118. The information provided in the 1983 report (CERD/C/88/Add.5) still applies, but activities in this field, which now fall within the domain of the Communities, have naturally been diversified owing to the importance attached to the question of human rights by all strata of the Belgian population. This general observation is also true of cultural matters, where authorities of the Communities foster the activities of associations formed by various ethnic local communities as well as of bodies working against racial discrimination in the cultural field, either through associations concerned with training or with information in the field of racial discrimination or through immigrants' associations set up to promote their own cultures, traditions and languages. Legal provisions which govern the granting of subsidies in cultural matters generally apply to groups and individuals of different national and ethnic origin as much as to Belgians. Furthermore, special attention is given in cultural policy to the interests of such specific sections of the public and of various cultural entities as regards their expression and development. This is true, in particular, of various fields of artistic activity (theatre, film, music, video productions). Some television and radio programmes are being replaced by programmes in the languages of origin. The same is also true of cultural centres, public libraries and adult education establishments, as well as of youth policies, etc.

119. As to information at the national level, each year the authorities use the opportunity afforded by the celebration of human rights events within the framework of the United Nations in order to make the public aware, generally through the media, of the need to promote human rights and to fight apartheid and racism. Thus, the fortieth anniversary of the Universal Declaration of Human Rights provided an opportunity for a large number of events held throughout Belgium as well as for a national symposium organized jointly by the Ministry of Foreign Affairs and the Ministry of Justice, with the participation of numerous Belgian and foreign experts and non-governmental

organizations active in the human rights field. These ceremonies, conducted on an impressive scale and relayed by the media, led to the publication of information booklets and documents widely circulated among the general public.

120. Some organizations, such as the Movement against Racism, Anti-Semitism and Xenophobia (MRAX) and the Belgian League for the Protection of Human Rights, regularly organize high-level symposia on issues connected with racism, xenophobia and human rights. Both parts of the Belgian section of Amnesty International are aso extremely active in this field. In April-June 1991, the non-governmental organization Coopération par l'éducation et la culture arranged a major exhibition under the title "The White Man's Black", on the subject of certain racial stereotypes in popular western imagery.

121. Like its partners in the European Community, Belgium has always unequivocally condemned the apartheid regime, which is a denial of human rights and fundamental freedoms. It supports all efforts made by peaceful means and through negotiation to bring about complete elimination of that regime and replace it by a democratic system in which all South Africans can enjoy equal rights. Belgium notes the recent positive moves towards the elimination of the apartheid regime in South Africa. The legislative pillars of this institutionalized system of racial segregation, which constitutes a serious violation of human rights, have been dismantled, and Belgium, like its partners in the Community, continues to encourage the further development of the process of change taking place in South Africa, while emphasizing the importance of resolving all issues outstanding as soon as possible, so that negotiations on substance may go ahead. The violence which continues to ravage the country remains a matter of serious concern and is an impediment to the efforts of all those working for the creation of a new, non-racial and democratic South Africa. In this spirit, Belgium welcomed the signature of a national peace agreement and hopes that the agreement will help to put an end to the bloodshed which is delaying a start of substantive negotiations to draft a new Constitution. Within the Twelve, Belgium will continue to support the programme of positive measures to promote social development and to back the active forces struggling for equality and genuine reform by peaceful means, and it will continue to assist the victims of apartheid.

## II. IMMIGRATION POLICY

122. One, though doubtless not the only, means of fighting all forms of discrimination, including racial discrimination, is to work out a comprehensive and integrated policy on immigration. In the past few years, the Belgian authorities have multiplied their efforts to outline such a policy and gradually implement measures in various sectors of the societal life of both native Belgians and immigrants. In view of the range and complexity of the subject, the present section of the report will not attempt to describe all the measures already taken, about to be taken or under study in every area of application of the policy.

123. In this connection, the reader is referred to a document issued by the Office of the Crown Commissioner for Immigration entitled "Action taken on the proposals of November 1989 and May 1990", vol. 1 (December 1990), which details the numerous proposals made by the Office of the Commissioner and the

work done by the authorities within the wide range of sectors in which various forms of action prove to be most appropriate. [The document can be consulted at the United Nations Centre for Human Rights.] In this section we will endeavour to describe the main immigration policy trends and the action by the public authorities and, as an illustration, indicate some of the measures in two specific fields, namely, education and housing.

## A. Main immigration policy trends

124. By a governmental agreement of May 1988, the Belgian Government undertook to carry through an energetic policy for the benefit of immigrants with a view to ensuring harmonious coexistence with the Belgian population. The Government took the view that it was primarily responsible for coordinating, monitoring and supporting the policy followed by all competent authorities and public bodies at the national, Community, regional and local levels. Priority attention was to be given, with due consideration to the areas of competence of these authorities, to problems of employment, housing and education for the promotion of integration, including instruction in one of the national languages.

125. At a meeting of the Government/Executive Coordinating Committee held on 8 November 1988 it was decided to set up an interministerial committee for immigration policy with ministerial-level representation for each echelon of authority, with a view to coordinating policy at the national, Community and regional levels. An Interministerial Conference on Immigration, headed by the Prime Minister, consists of seven national ministers, two members of the Flemish Executive, one member of the Executive of the French Community, one member of the Walloon Regional Executive, three members of the Executive of the Brussels-Capital region and one member of the Executive of the German Community.

126. In November 1988, the Government/Executive Coordinating Committee also spoke in favour of establishing an Office of the Crown Commissioner for Immigrants, with autonomous status. A Crown Commissioner and a Deputy Crown Commissioner for Immigration Policy were appointed for a term of four years under a Royal Decree of 7 March 1989, which describes their duties and the resources placed at their disposal. The Decree states that the Crown Commissioner's task is to consider and propose appropriate measures in connection with problems relating to immigrants. He is required to assign priority, bearing in mind the areas of competence of all parties, to problems of employment, housing and education for the promotion of integration, including instruction in one of the national languages, with a view to coordinating, monitoring and supporting the policy followed in that field by all the ministerial departments concerned, the Communities, the Regions and the commune authorities.

127. Ministers and Secretaries of State are to provide the Commissioner with the information required for the performance of his duties and those of his deputy. The Crown Commissioner is empowered to seek the advice of the Communities, Regions and local authorities and of any other public or private body concerned with matters relating to immigrants. The Crown Commissioner must, at intervals of six months, report to the Prime Minister on the results of his and his deputies' work.

128. On 21 April 1989 the Council of Ministers decided to assign the Office of the Crown Commissioner a budget of close on 43 million francs for operating costs. The manning table includes 24 posts, something which has made for a high-level multidisciplinary team that includes some members of foreign origin, and this adds to the credibility and intercultural dimension of the calibre of the team. The Council of Ministers also authorized the Crown Commissioner to recruit 22 subsidized contractual staff members to run a conciliation service and operate a telephone service for advice to immigrants and to set up a documentation and information unit to assist the departments of the Crown Commissioner's Office in their task. The Crown Commissioner and his deputy participate in the work of the Conference and are required to take the necessary initiatives. Through its working groups, the Conference scrutinizes and acts in various fields on the roughly 200 proposals on immigration made by the Crown Commissioner's Office.

129. The Interministerial Conference and the Belgian Parliament have spoken in favour of fostering the idea of integration of immigrants, and the point of departure is integration in accordance with the following criteria: (a) assimilation where required as a matter of public policy; (b) consequent encouragement for thorough integration on the basis of the fundamental principles of the culture of the host country (modernity, emancipation and pluralism); (c) unequivocal respect for cultural diversity as a factor for mutual enrichment; and (d) promoting the structural involvement of minorities in the activities and in the goals of the public authorities.

130. In the course of a statement in the Chamber of Representatives on 7 May 1991, the Prime Minister explained the terms and the trends in this policy as follows:

> "Integration, which is the keystone of our policy, requires assimilation in regard to the fundamental principles of our society and our public policy. This also means recognition of the achievements of the emancipated society we live in today and, for example, the enormous achievements in the emancipation of women in our society.
>
> This concept means that immigrants who are ready to integrate should also be in a position to develop as individuals in our society and their cultural identity in the broadest sense should be respected. Lastly, there must be coordination with immigrants who - and they are many in number - are willing to endorse this basic concept of integration.
>
> The concept of integration therefore places important demands on immigrants and on our population so that we can today achieve in our country the things we have achieved in the past for broad groups of persons of another nationality, another culture and another religion. Clearly, this calls for open-mindedness and enormous efforts to build bridges between persons with such differing historical, cultural and religious traditions as those that exist in Europe and in the Arab world."

## 1. French Community

131. In the annexes to the Executive Agreement of 29 January 1988, the French Community set out the proposed arrangements and facilities in regard to immigration. The Executive plans to recorganize the Commission to study immigration problems and to put forward proposals on such matters as literacy, education and training. The Commission is called upon to work towards speedy implementation of a coordinated policy aimed chiefly at the integration of young immigrants. The Executive will also make sure that an Immigration Office is set up to liaise with associations and persons encountering immigration difficulties.

132. The French Community Executive Decree of 21 February 1989 establishing an Advisory Commission for the integration of young people of foreign origin puts into effect this Government's decision to establish a body to look into immigration problems. The Advisory Commission has 26 members and is composed of representatives of those directly involved, trade union organizations, municipal authorities and competent administrations. It has been assigned the task of using the documents and research already done in this field and conducting a study to formulate a coordinated policy with the main focus on the integration of young people of foreign origin.

133. The functions of the Immigration Office will be to represent the French Community at the Office of the Crown Commissioner for Immigration Policy, to strengthen the work of the Advisory Council for Population Groups of Foreign Origin, to define the functions and statutes of the regional centres, and to coordinate and support the action by the administration, more particularly with the associations.

134. The Advisory Council for Population Groups of Foreign Origin within the French Community was established in October 1986 to examine the social, cultural, legal, economic and administrative aspects of the problems encountered by immigrant or foreign populations, as well as those posed by coexistence in the French Community, and to give opinions either on its own initiative or at the request of the Community Minister responsible for immigrant policy and integration.

## 2. Brussels Region

135. The aims followed by the authorities of the Brussels Region in immigration policy are designed both to integrate the children of immigrants and to promote the coexistence of the different communities by taking action in matters pertaining to the Region, namely, housing, land development, local government policy, employment and economic expansion:

(a) The land development policy will seek to remove social and cultural ghettos by improving the fabric of urban society;

(b) The supervision and financing of the communes will release funds for special assistance to local authorities that submit projects to promote the integration of the immigrants. The network of local associations working to this end could also benefit from assistance channelled through the communes;

(c) In regard to employment, the Region is thinking of appointing individuals who will be vested with the necessary authority and can be called on to assist the communes and associations submitting integration projects;

(d) Economic policy will focus on maintaining secondary sector activities in a Region where the development of the tertiary sector could well exclude the children of immigrants because they are over-represented in the group with vocational skills;

(e) Regarding the premises for the establishment of institutions, discussions will be pursued with the other national, community and regional bodies as well as with the Office of the Crown Commissioner for Immigration Policy.

### 3. Flemish Community

136. On 22 March 1989, the Community Ministry for Welfare and the Family drafted a "Note on the Flemish Executive Government immigrant policy", ratified by the Flemish Council. In this note, the points of departure for an immigrant policy are explained and basic options regarding that policy are taken, more precisely in the field of education, employment and social security, housing, participation in society, self-organization and cultural identity, health care and policy participation.

137. In order to improve the integration of immigrants in the Flemish community, a Flemish government decree containing the conditions for recognizing and subsidizing integration centres for immigrants proposed by the Community Minister for Welfare and the Family, was ratified on 18 July 1990. These integration centres are active on three levels: a general Flemish-level centre mainly dealing with coordination, management training, documentation, applied research, support of intermediary-level facilities, an annual report on progress made concerning the integration of immigrants; regional integration centres, inter alia assigned with coordinating and guiding local initiatives, supporting and offering management training, planning and coordinating language courses for adults; local integration centres, providing a meeting place, and offering information and services, education, sensitization and counsel on the local level. All these centres will have an immigrant council at their disposal. At least one third of all members will be representative of the immigrant community. Immigrant women and young people must be represented here as well.

138. On 31 July 1990, the Flemish Council ratified the Flemish Government Act establishing a Flemish fund for the integration of underprivileged persons, through which a substantial annual subsidy is granted to municipalities and public social welfare centres in the Flemish region in a special situation as far as underprivileged population groups are concerned. The number of immigrants residing in the municipality concerned is an important criterion for determining the special situation. Municipalities and/or public social welfare centres assisted by the abovementioned fund must spend the subsidies received on projects approved of in advance by the authorities.

139. In 1991, the Community Minister for Welfare and the Family published a leaflet, entitled "twintig vooroordelen over migranten en een weerlegging" (twenty prejudices about immigrants and a refutation), on a mass scale. As study projects revealed that many cases of racism and xenophobia are based on misunderstanding and lack of information, this leaflet was made available to social workers, education and local authorities, and the media.

## B. Integration initiatives and experiences in education

### 1. Flemish Community

140. A genuine educational policy for immigrants was started as recently as the 1991-1992 school year. With the support of the Crown Commissioner for Immigrants and on the initiative of the Community Minister of Education, the Education-Immigrants' Committee was established. Based on extensive deliberation and a scientific research project, this Committee drafted a policy paper, first and foremost discussing, qualitatively as well as quantitatively, the facts and background of immigrants' problems in education, and it has made practical proposals for achieving an education policy for migrants. The Community Minister of Education has examined many of these proposals.

141. Reference is made to articles 21 and 22 of the Flemish Government Act of June 1991 dealing with the organization of common pre-school and primary education based on an instruction period package. In this Act, room is created explicitly for extra instruction periods for schools with relatively high concentrations of migrants. Target group pupils and pupils who have not attended a Flemish school from the beginning are focused on here. Schools situated in underprivileged municipalities with at least 20 target group pupils (or 10 per cent of the overall number of pupils) per level and location can try and make up for education arrears and develop intercultural education. Additionally, means are reserved for receiving and assisting pupils in primary education who do not have Belgian or Dutch nationality, who attend a school with Dutch as the basic language in spite of the fact that it is not their mother tongue and who have an insufficient command of Dutch to follow courses successfully. Provided the number of such pupils is at least four, additional instruction periods per school can be granted for them, in the course of the school year (one and a half periods per pupil). Consequently, these foreign pupils can be guided adequately every week for one full school year. Moreover, great weight is attached to school development activities in an attempt to bridge the gap between the family, the neighbourhood and the school. A school that is assigned periods for education stimulation engages itself to develop initiatives in this field.

142. Schools filing requests to provide education in pupils' own language and culture are allowed to do so using teachers specifically assigned to this task by embassies for groups of at least 20 pupils per language and with the consent of two thirds of the parents in this group.

143. As counselling is organized for each network, the required educational and moral support will be given with the aim of implementing these purposes in the schools. Teacher training must also concentrate on this aspect.

2. Primary education for immigrant children in the French Community

144. Under the Royal Decree of 30 August 1984, primary schools must provide an extra course on the language of instruction to pupils who are stateless or of foreign nationality. The course is taught by a primary schoolteacher during regular school hours. During the present school year, this course is given in all the school systems, with a maximum of 3,060 class periods, which means the equivalent of 127 full-time jobs. On the basis of average salary of a primary schoolteacher, the budget cost of this measure would be 101.6 million francs.

145. Other measures taken to help the children of immigrants succeed in school have been pursued and extended. These include:

(a) Specific further training courses for teachers in schools with a high ratio of immigrant children;

(b) Experiments in the three school systems to promote integration;

(c) Priority education areas (ZEP) selected because of the significant number of immigrant children. In the Brussels Region, these areas include 28 basic schools with 9,659 children and 14 secondary schools (first level) with 2,361 children. In the Walloon Region, these areas cover 60 basic schools with 15,291 children and 18 secondary schools (first level) with 2,950 children.

146. The French Community Executive has made a budget allocation of 75 million francs for these priority education areas. In addition, an agreement has been signed with the Walloon and Brussels Regions whereby a subsidy has been allocated for the purpose of hiring employees on contract. An experiment similar to the one started in the Brussels Region at the beginning of the school year could begin in the Walloon Region on 1 September 1991.

3. Teacher training

(a) Initial training

147. An intercultural teacher training unit has been set up by the Basic Education Retraining Commission (CREF). The Minister of Education, Training and Scientific Research and his educational advisers are looking into the possibility of introducing such training at the initial level for all teachers in the nursery, primary and lower secondary schools.

(b) Further training

148. The Minister of Education has made a budget allocation to provide the officials of the school systems with funds for use according to need. The subsidized official system and the subsidized independent system will, within this framework, offer courses in intercultural teaching for which teachers can register free of charge.

(c) Training in social development

149. Two institutions have jointly organized, within the framework of training in social development, a thorough training course in intercultural teaching (280 hours of classes).

(d) Subsidized education

150. Inspectors in subsidized basic education have been urged to invite teachers of the language and culture of origin from the embassies to participate in their teacher training conferences.

(e) Intercultural education

151. No official directive has been issued for the promotion of intercultural education in all the schools in the French Community. However, considerable efforts are being made under bilateral cultural agreements to do the utmost to move ahead with this type of education.

152. These initiatives all have the same goals: (a) greater success by children of foreign origin; (b) cultural enrichment of all pupils by studying subjects, in a maximum number of disciplines, from an intercultural standpoint; (c) comparative teaching of French and the mother tongues so that the children can benefit from the respective contributions of each language but at the same time avoid acquiring only incomplete mastery of any one or all of the languages; and (d) improved family-school relations.

4. Mother tongue classes

153. The reason mostly given to justify these courses is the moral obligation to enable the children of immigrants to return to their country of origin. This was the argument advanced in support of the considerations in introducing the articles of Directive No. 77/486/EEC of 25 July 1977 of the Council of the European Communities. However, since more than 80 per cent of the children of immigrant workers in the French Community were born there, this argument is no longer valid. It has become much less valid now that immigrant workers are investing more heavily in local real estate and transferring less money out of the country, which is a clear indication that most of them intend to settle in our country for good. In that case, should these courses be continued and on what basis?

154. The Ministers feel that the amount of time per week that can be made available for classes in the mother tongue does not allow the children to acquire a full grasp of the language without detracting from the other subjects taught in the compulsory curriculum. However, they consider that the psychological benefit to be derived from those courses may be substantial, because they can prevent a large number of children of immigrant workers from falling into a cultural vacuum that would have harmful consequences for their schooling and integration. That particular danger is, in their view, all the more serious because the decline in the Belgian population is only partly offset by the higher birth rate in the foreign communities.

155. There are two obstacles to the practical organization of these courses and they explain the statistics given earlier: (a) the very high ratio of foreign children; and (b) the extremely wide variety of ethnic groups and languages in many of our classrooms. Until the necessary funds are made available for the French Community to pay for these mother tongue classes, all that is being done at present is to offer the embassies space in the schools of the Community system. The regulations on the use of school premises make the premises available free of charge, provided the three conditions are met: (a) the States are members of the European Community; (b) the foreign children are being provided with compulsory education; (c) the classes are scheduled after regular school hours, from Monday to Friday inclusive.

156. The Crown Commissioner's report makes a large number of recommendations on teaching and education that it would be too long to list here. For example, it advocates the establishment of coordination centres in areas with a high concentration of immigrants, research and teaching centres and the inclusion of the principles of a real intercultural teaching method in the training programme for all teachers. The report also makes some recommendations as to structures, but the main one concerns the degree of concentration. It is proposed that in the areas of high immigrant concentration the ideal proportion of immigrant children per class should be 25 to 30 per cent, and that this level could be increased to 50 per cent if the children are from southern Europe. The recommendation primarily concerns nursery and primary schools. It is proposed, furthermore, that the teachers recruited for these schools should be from an immigrant background and have a Belgian teacher's diploma.

157. The high proportion of children of immigrant workers in the French Community poses problems to which the school authorities pay heed, but the extent of the problems and the cost of optimum solutions make it difficult to solve them. It is in the Brussels Region that these problems are most acute. The Region's Council and Executive are well aware of them and, although both bodies are recent, they have already contemplated a range of measures with the communes to provide them with indispensable assistance.

This section on the education of immigrants has drawn on the material in the report by Belgium (1991) transmitted to the Education Committee of the Organization for Economic Cooperation and Development (OECD).

## C. Housing

### 1. Areas with a high immigrant population

158. At the national level, the Interministerial Conference on Immigration has considered the proposals submitted by the Crown Commissioner's Office. It is proposed that the first step should be to make an inventory of problem areas with a high immigrant population and then try to determine the common features of these different areas in collaboration with the bodies concerned, such as the communes, the CPAS, the Housing Fund, the low-cost housing societies, the associations, and the residents. Three regions have undertaken to ensure the execution of these proposals.

159. The Brussels-Capital Region has financed two studies:

(a) To map the areas to be protected and upgraded, and also provide information such as the condition of the buildings and roads, and statistical data on the population;

(b) To frame proposals on housing policy, including the housing of the underprivileged groups.

Integrated development experiments are under way in many districts in Brussels and the aim of the project for that region is to consolidate these experiments and set them in the framework of the urban renewal policy on which a regional ordinance is expected to be issued. Under an agreement, the Region subsidizes associations which provide assistance in finding housing. This assistance is for vulnerable groups and entails a dual approach i.e. prevention and support.

2. Flemish Region

160. A sum of 1 million francs has been earmarked in the 1991 budget for low-cost housing in the urban centres of Ghent and Antwerp. The Flemish Executive has decided to allocate more funds to promote rehabilitation and improvement in areas with housing problems, through construction, low rentals and home purchase subsidies. Housing problem areas are defined as areas which have one or several residential areas, whether or not adjacent, with large, underprivileged or poorer socio-economic groups, and where a local government housing policy that geared to low-cost dwellings is needed. In 10 towns and communes, areas with dilapidated housing have been pinpointed and the alternative financing system has been introduced.

161. A sum of 500 million francs was allocated to the anti-poverty fund, and for 1990, 1.125 billion francs were earmarked and distributed among all the communes of their Flemish region, except for Ghent and Antwerp, to support their policy of assistance to the poorer population groups, into which many immigrants fall. For 1991-1992, 1.125 billion francs have been made available to the Flemish Fund for Integration of the Underprivileged. The Social Investment Fund has allocated 850 million francs for the renovation of housing development in the Limburg mining area.

162. The Office of the Crown Commissioner for Immigration Policy and the Working Group on areas with a high immigrant population are jointly responsible for formulating specific proposals for housing in Flanders. The Working Group was set up pursuant to a decision by the Interministerial Conference on Integration and consists of representatives from the Flemish Executive, the Flemish Housing Society, the Flemish Housing Fund, the King Baudoin Foundation and the universities.

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